IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 4161 of 1997
For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOKKUMAR P LAKHANI

Versus

EXECUTIVE ENGINEER

Appearance:
1. Special Civil Application No. 4161 of 1997
MR IS SUPEHIA for Petitioner No. 1
Mr. H.M. Prachchhak, AGP for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 15/12/2004

ORAL JUDGEMENT

1. This petition under Article 226 of the Constitution of India is filed by the petitioner challenging the show cause notice issued by the respondent on 30th May 1997, whereby, the petitioner was asked to explain as to why his services should not be terminated in view of the unauthorised absence from duty and, during such period, the petitioner had indulged into criminal activities.

1.1 The petitioner has also prayed that the respondent may be directed to pay the outstanding salary to the petitioner since 10th January 1997.

2. The Court, by order dated 8th September 1997, while admitting the present writ petition and granting the interim relief, observed as under:

> "Rule 640 of the Bombay Civil service Rules requires that no Government servant who has been granted leave on medical certificate may return to duty without first producing the medical certificate of fitness in such form as the Government may prescribe. In view of the petitioner's long absence from service, disciplinary proceeding has been initiated against the petitioner by issuing chargesheet on 3rd February, 1997 which is, I am told, in progress. Be that as it may. Disciplinary proceeding shall take its own course. However, since the petitioner has not been suspended from service, it is imperative for the respondents to permit him to return to duty on production of the medical certificate of fitness in the prescribed form. By way of interim order, therefore, it is directed that on the petitioner's producing the medical certificate of fitness in the prescribed form. the petitioner be permitted to join the duty."

Pursuant to the said order, the petitioner had gone to resume duties with the respondent and, thereafter, the petitioner was transferred to Ahmedabad Division. Learned AGP, Mr. Prachchhak, has submitted that, after transfer of the petitioner from Rajkot to Ahmedabad Division, the petitioner was placed under suspension for his alleged misconduct. The aforesaid fact is not denied by the learned advocate for the petitioner.

3. Therefore, according to the learned advocate for the petitioner, at this juncture, no cause of action survives and it may be kept open for the petitioner to take appropriate legal proceedings to challenge the order of suspension passed by the respondent.

4. The learned AGP states that he has no objection and the grievance with regard to his salary which was not given to the petitioner for the dispute raised in this petition about unauthorised absence of the petitioner and the grounds for the same, as agitated by the petitioner, and opposed by the respondent, can also be decided by the respondent as and when the final order of penalty is passed against the petitioner.

5. In this view of the matter, the petition is disposed of. Rule is discharged with no order as to costs. The interim relief is vacated. It is open to the respondent to decide the dispute with regard to

unauthorised absence at the time of taking final decision against the petitioner with regard to disciplinary action which has been initiated against the petitioner or outcome of the criminal case pending against the petitioner.

(Anant S. Dave, J.)
(swamy)